

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL L. RHEM,

Petitioner,

v.

JEFFREY UTTECHT,

Respondent.

Case No. C07-5058RJB

REPORT AND
RECOMMENDATION

Noted for October 12, 2007

This matter is before the court on respondents' answer to the petition, and petitioner's motion for voluntary dismissal (Doc. 18). After reviewing the motion and the remaining record, this court recommends the following:

(1) A habeas claim is barred from federal review where the petitioner has failed to exhaust state remedies. Coleman v. Thompson, 111 S.Ct. 2546, 2565 (1991).

Mr. Rhem filed a petition for writ of habeas corpus on or about February 7, 2007. Respondent has not answered the petition, and does not oppose Petitioner's motion to withdraw the petition. Mr. Rhem explains in his motion that he is currently pursuing a collateral attack (a Personal Restraint Petition) with the state court and that his claims in this case are not yet properly exhausted.

Dismissal, without prejudice, is appropriate in this matter because it appears Mr. Rehms has not properly exhausted all of his claims. Petitioner should be aware that there is a one-year period of limitation to file a petition for federal habeas corpus will apply, but it is tolled during the time petitioner is

properly litigating the issue in the state court. *See* 28 U.S.C. § 2244(d)(1).

Petitioner's motion for voluntary dismissal should be GRANTED. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed.R.Civ.P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on **October 12, 2007**, as noted in the caption.

DATED this 20th day of September, 2007.

/s/ J. Kelley Arnold
J. Kelley Arnold
U.S. Magistrate Judge